

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**Case No. 8:03-CR-77-T-30TBM**

**SAMEEH TAHA HAMMOUDEH**  
\_\_\_\_\_ /

**MOTION FOR MISTRIAL  
AND MEMORANDUM OF LAW IN SUPPORT**

Defendant, Sameeh Taha Hammoudeh, by and through undersigned counsel, and pursuant to the Fifth and Sixth Amendments to the U.S. Constitution, requests that this Honorable Court declare a mistrial after the jury's exposure to a recent newspaper poll stating that 87% of those polled believed that this jury would find the lead defendant, Sami Amin Al-Arian, guilty, which, combined with other factors, results in the denial of a fair trial, and as grounds states the following:

1. Prior to trial, the defense moved for a change of venue, based on pretrial publicity that tainted the venire. (Docs. 991, 994).<sup>1</sup> From May 16 to May 18, 2005, the Court conducted voir dire of a panel of approximately 150 of the 322 potential jurors who returned questionnaires. Ultimately, 89 potential jurors were ruled by this Court to be eligible to serve on the jury in this case. After the Court ruled on peremptory strikes, a 12-member jury was seated with 7 alternates. On May 20, 2005, the defense reasserted its

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<sup>1</sup> Mr. Hammoudeh adopted these motions. (Doc. 1109, 1110).

change of venue motion, on the basis that the voir dire allowed by the Court did not adequately rebut the presumption of prejudice and that it demonstrated the prospective jurors' familiarity with the facts and specifically with Dr. Al-Arian. (Doc. 1102).

2. During trial, there has been a continuing pattern of examples of the impact of extrajudicial information reaching jurors, as evidenced in this Court's inquiry on August 29, 2005, where it was discovered that Juror 325 had made statements expressing predeterminations of trial issues and communicated them at least to Jurors 123 and 135. The defense moved to remove all three jurors. The latter two jurors remain on the jury, and Juror 325 has been made the last alternate.

3. Later in the trial, a juror reported to the Court that their image had been seen in the television media, as reported by the juror's neighbors. This report evidenced at least that juror's concern about the public being aware of their jury service. The Court directed that the Marshal's Office investigate this matter and gave the jury an assurance that it would pursue the matter.

4. Recently, during the afternoon of November 22, 2005, the defense learned from the Court that the jury had been exposed to a poll published in *The Tampa Tribune* on November 17, 2005, appearing as follows:

#### COURT OF PUBLIC OPINION

In an unofficial survey with 1,225 responses, TBO.com asked Tuesday: How will federal jurors decide in fired USF Professor Sami Al-Arian's terror funding trial? Guilty (1,071) 87% Not guilty (154) 12%.

*The Tampa Tribune*, Nov. 17, 2005.

5. This poll tells the jury what members of their community think that they are going to decide in their verdict, at least as to Sami Al-Arian. The jurors' exposure to this poll, along with all of the other publicity to which the jurors were exposed (whether before or during trial) has cumulatively prejudiced the Defendants' right to a fair trial.

6. Apparently, the jury deliberations continued, without any notice to the defense from November 17, 2005 until November 22, 2005, and any timely remedy is no longer available. At this point, consequences of pretrial publicity foreseen in the motions for change of venue have come true during trial, and the prejudice to the Defendants is so evident that nothing short of a mistrial would be an appropriate remedy.

#### **MEMORANDUM OF LAW**

The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.

*United States v. Rowe*, 906 F.2d 654, 656 (11th Cir. 1990) (quoting *Patterson v. Colorado*, 205 U.S. 454, 462 (1907) (Holmes, J.)). The “‘theory’ that the jury’s verdict be based solely upon the evidence offered at trial ‘goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury.’” *Id.* (quoting *Turner v. Louisiana*, 379 U.S. 466, 472 (1965)). Only evidence offered against a defendant in a courtroom should be considered by the jury, because only such evidence “receives the judicial protection of the defendant’s sixth amendment right of confrontation, cross-examination, and counsel.” *Id.* Additionally, the Due Process Clause of the Fifth Amendment guarantees the Defendants the right to be tried by a panel of impartial and indifferent jurors who can render a verdict based

on the evidence presented in court. *Irvin v. Dowd*, 366 U.S. 717, 721-22 (1961) (Fourteenth Amendment).

The parties have previously argued and submitted case law to the Court regarding the jurors' exposure to extrinsic information<sup>2</sup> and have filed motions and renewed motions (written and oral) requesting a change of venue.<sup>3</sup> Because the jury has been subjected and exposed to so much publicity, prior to and during trial, including the most recent assertion of the community's views on how the jury will decide the case, no other remedy than a mistrial will assure that the Defendants' Fifth and Sixth Amendment rights are guaranteed.

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<sup>2</sup> Mr. Hammoudeh reasserts all previous arguments and would direct the Court to *United States v. Martinez*, 14 F.3d 543 (11th Cir. 1994); *United States v. Rowe*, 906 F.2d 654 (11th Cir. 1990); *United States v. Heller*, 785 F.2d 1524 (11th Cir. 1986); and *United States v. Yonn*, 702 F.2d 1341 (11th Cir. 1983).

<sup>3</sup> Mr. Hammoudeh reincorporates by reference and reasserts all previous change of venue arguments made by the defense in this case. Mr. Hammoudeh would further note that the Eleventh Circuit issued an opinion during the course of this trial, a copy of which was provided by counsel for Dr. Al-Arian to the Court, reversing the conviction of five men accused of being Cuban spies on the basis of the denial of the defendants' motion for change of venue. *United States v. Campa*, 419 F.3d 1219 (11th Cir. 2005). The Court found that "[d]espite the district court's numerous efforts to ensure an impartial jury in this case, we find that empaneling such a jury in this community was an unreasonable probability because of pervasive community prejudice." *Id.* at 1261. Subsequently, the Eleventh Circuit ordered that *Campa* be reheard *en banc* and vacated the panel's opinion. 2005 WL 2840320 (11th Cir. Oct. 31, 2005).

Accordingly, Mr. Hammoudeh respectfully requests that this Court declare a mistrial.

Respectfully submitted,

/s/ Stephen N. Bernstein  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23rd day of November, 2005, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; Alexis L. Collins, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Kevin T. Beck, Wadie E. Said, and M. Allison Guagliardo, counsel for Hatem Fariz.

/s/ Stephen N. Bernstein  
Stephen N. Bernstein, Esq.